

STATEMENT OF CONSIDERATION RELATING TO

401 KAR 11:001, 401 KAR 11:010, 401 KAR 11:020, 401 KAR 11:030, 401 KAR 11:040, and
401 KAR 11:050
“Amended After Comments”

Energy and Environment Cabinet
Department for Environmental Protection
Division of Compliance Assistance

I A public hearing on 401 KAR 11:001, 401 KAR 11:010, 401 KAR 11:020, 401 KAR 11:030, 401 KAR 11:040, and 401 KAR 11:050 was held on August 25, 2009, at 10am at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky.

II The following people attended this public hearing or submitted written or oral comments:

Attended public hearing:

| <u>Name and Title</u> | <u>Affiliation</u> |
|--|--|
| Kimberly Padgett, State Director | KY Rural Community Assistance Program |
| Ruth Lancaster, Production Coordinator | Louisville Water Company |
| Melissa Brothers, Executive Director | Kentucky Water and Wastewater Operators' Association |

Submitted oral or written comments regarding the administrative regulation:

| <u>Name and Title</u> | <u>Affiliation</u> |
|------------------------------------|--|
| Ruth Lancaster, Certified Operator | Louisville Water Company |
| Jimmy Grimm, Board Chairman | Kentucky Water and Wastewater Operators' Association |
| Kimberly Padgett, State Director | KY Rural Community Assistance Program |
| Emily Harkenrider, Analyst | Legislative Research Commission |

III The following people from the promulgating administrative body responded to written comments:

| <u>Name and Title</u> | <u>Affiliation</u> |
|----------------------------|-----------------------------------|
| Aaron Keatley, Director | Division of Compliance Assistance |
| Julia Kays, Branch Manager | Division of Compliance Assistance |

IV Summary of Comments and Responses for 401 KAR 11:001

(1) Subject Matter: Drafting corrections

(a) Commenter: Emily Harkenrider (Legislative Research Commission)

Comment: Ms. Harkenrider suggested several technical drafting corrections.

(b) Response: The cabinet agrees and has made the suggested changes.

Summary of Comments and Responses for 401 KAR 11:010

(1) Subject Matter: Drafting corrections

(a) Commenter: Emily Harkenrider (Legislative Research Commission)

Comment: Ms. Harkenrider suggested several technical drafting corrections.

(b) Response: The cabinet agrees and has made the suggested changes.

Summary of Comments and Responses for 401 KAR 11:020

(1) Subject Matter: Integrity of sample collection, preparation, and analysis

(a) Commenter: Ruth Lancaster

Comment: “The certified operator shall ensure the integrity of the samples he analyzes...” this should be reworded to indicate that the operator should not analyze and record results for a sample that he knows to be taken or labeled improperly. If the operator was not the sample collector, he cannot “ensure the integrity” of the sample – he can only ensure the integrity of his own analysis and the results reported to the cabinet.

(b) Response: This proposed administrative regulation also includes a requirement that a certified operator shall be objective, truthful, and complete in applications, reports, statements and testimony provided to the cabinet. This requirement would address your first comment. The cabinet agrees that a certified operator shall only be responsible for samples he/she has collects. This requirement already contains language narrowing the scope to include only samples that the certified operator takes themselves. No change will be made to this administrative regulation regarding this comment.

(2) Subject Matter: Proof of certification

(a) Commenter: Ruth Lancaster

Comment: With the advent of electronic record keeping, the physical certification card has become somewhat obsolete. Given that operational personnel may be performing tasks wearing Level B Hazmat gear, or hip-deep in mud or water, or other adverse environmental conditions, it is not realistic to assume that an operator will be carrying a wallet or purse with them at every moment of their working day. I respectfully suggest that this requirement be eliminated.

(b) Response: The cabinet believes that it is the responsibility of the certified operator to provide proof of the operator’s current certification status. No change will be made to this administrative regulation regarding this comment.

- (3) **Subject Matter: Drafting corrections**
(a) **Commenter: Emily Harkenrider (Legislative Research Commission)**
Comment: Ms. Harkenrider suggested several technical drafting corrections.
(b) **Response:** The cabinet agrees and has made the suggested changes.

Summary of Comments and Responses for 401 KAR 11:030

- (1) **Subject Matter: Drafting corrections**
(a) **Commenter: Emily Harkenrider (Legislative Research Commission)**
Comment: Ms. Harkenrider suggested several technical drafting corrections.
(b) **Response:** The cabinet agrees and has made the suggested changes.

Summary of Comments and Responses for 401 KAR 11:040

- (1) **Subject Matter: Sub-classifications**
(a) **Commenter: Ruth Lancaster**
Comment: It was my prior understanding that an operator holding a surface water “A” certification could automatically operate a groundwater “B” plant, (under the assumption that a surface water plant is more complex and demanding). The proposed regulation appears to eliminate that possibility by specifically stating that the “A” certification can operate plants using surface water, GUI, and groundwater using a component of conventional filtration, except that I note in the qualification criteria for the III-B and IV-B that surface water treatment experience is acceptable. Does this mean that in order to operate a III-B plant, a IV-A operator must submit an application using his surface water experience to qualify, and pass an additional III-B test? Is the intent of this regulation to change past practice?
(b) **Response:** The cabinet did not intend to change this requirement and has modified the regulation to ensure consistency with the previous requirements.
- (2) **Subject Matter: Class IV licenses**
(a) **Commenter: Ruth Lancaster**
Comment: Class IV licenses: “a baccalaureate degree in science, engineering, or equivalent...” Does this mean ‘equivalent’ technical degrees in other fields may be substituted (for example, environmental management) and if so, what would be considered a ‘science’ degree and an ‘equivalent’? (for example: Nursing? Environmental Education? Computer ‘Science’?) Or, alternatively, does this language mean that the equivalent of a baccalaureate degree (i.e. 4 years of schooling, 120 semester hours, etc.) in the appropriate fields of study is needed? While a very small section of the regulation package, these few sections on operator certification qualifications generate a tremendous amount of discussion and correspondence with the Division, as well as costs to water systems and individual related to the good-faith submission of non-refundable application fees when applicants believe they qualify but are denied the opportunity to test because their interpretation of the requirements does not match the Division’s interpretation.

(b) Response: The cabinet used the term equivalent to address just this issue. With a large variety of degree programs, it is not practical for the agency to identify them all in regulation. The cabinet will be using its professional judgment to accept scientific degrees that provide an educational foundation for the knowledge needed to properly operate and maintain a drinking water facility. No change will be made to this administrative regulation regarding this comment.

(3) Subject Matter: Substitutions

(a) Commenter: Ruth Lancaster

Comment: Do I read this correctly that environmental engineering is not considered engineering for the purposes of degree qualification, and can only be used for 50% of the degree requirement? Please advise if this is an incorrect reading of the text.

(b) Response: Environmental Engineering is a discipline that would be encompassed under the broader term of engineering. No change will be made to this administrative regulation regarding this comment.

(c) Commenter: Ruth Lancaster

Comment: “One year of experience.... For one year of education”. Does this mean that a maximum of one year of experience may be used as a substitute for education (i.e., that a Class IV-A applicant with 2 years of college can only substitute one year of experience to achieve a 3rd year of college, and therefore will never qualify for certification)? Or, does this statement merely explain that one year of experience is equivalent to one year of education (past practice)? If so, could it be reworded for clarity? If the intent is indeed to limit the amount of education that can be ‘made up’ by additional experience, there are serious concerns: this will greatly reduce the number of persons who can potentially qualify for the IV-A, IV-B and IV-D license, and aggravate a looming shortage in the increasingly aging operator population

(b) Response: This requirement establishes that one year of operational experience is equivalent to one year of education. No change will be made to this administrative regulation regarding this comment.

(4) Subject Matter: Operator in training

(a) Commenter: Jimmy Grimm

Comment: KWWOA is opposed to the establishment of an operator in training certification for water treatment and/or distribution systems at any level. An operator in training certification for water treatment and distribution systems serves no purpose. Experience is a vital component in the three-pronged approach to determining an individual meets the minimum qualifications to serve as a certified operator. KWWOA requests that the Division of Compliance Assistance reconsider the establishment of this type of certification.

(b) Response: The operator in training designation has been revised to extend the operator in training designation to all classification levels for wastewater treatment and collection; and water treatment and distribution certifications. This will provide more

opportunities for operators to apply for certification in higher level classifications prior to earning the required experience. The cabinet believes this revision will assist in recruiting new operators into the profession. In addition, certified operators in training will be held accountable for their actions as a certified operator and will be required to complete training before renewing their certification. Currently, there are many individuals who work at wastewater and water systems that are not certified. The extension of the operator in training designation to all certification levels will allow these individuals to become certified in a classification prior to meeting all the requirements needed for a normal certification.

(c) Commenter: Kimberly Padgett

Comment: There is much concern about the shortage of operators and bringing a younger generation into the water and wastewater arena. While this certification may assist in bringing newcomers into the very small wastewater systems in Kentucky, we as a profession should be more innovative in luring newcomers into drinking water treatment and distribution.

While the operator in training title could provide a higher level of professionalism for new hires, each system as an employer already has the ability to develop this title as a job description or position. Kentucky RCAP firmly agrees that experience with the appropriate training, rather than education or passing the proper certification test, is the most important component to the certification program. We note and applaud your removing the “in direct responsible charge” from the OIT responsibilities.

(b) Response: The operator in training designation has been revised to extend the operator in training designation to all classification levels for wastewater treatment and collection; and water treatment and distribution certifications. This will provide more opportunities for operators to apply for certification in higher level classifications prior to earning the required experience. The cabinet believes this revision will assist in recruiting new operators into the profession. In addition, certified operators in training will be held accountable for their actions as a certified operator and will be required to complete training before renewing their certification. Currently, there are many individuals who work at wastewater and water systems that are not certified. The extension of the operator in training designation to all certification levels will allow these individuals to become certified in a classification prior to meeting all the requirements needed for a normal certification.

(5) Subject Matter: Drafting corrections

(a) Commenter: Emily Harkenrider (Legislative Research Commission)

Comment: Ms. Harkenrider suggested several technical drafting corrections.

(b) Response: The cabinet agrees and has made the suggested changes.

Summary of Comments and Responses for 401 KAR 11:050

(1) Subject Matter: Renewal Form

(a) Commenter: Jimmy Grimm

Comment: Regulatory requirements state that an individual who renews their certification after the renewal deadline must pay the renewal fee and late fee in order to have their license returned to active status. A review of the Application for Certification Renewal indicates that this form is somewhat vague. KWWOA requests that the form be altered to clarify that both fees are required of an operator who renews their certification late.

(b) Response: The cabinet agrees and has made the suggested changes.

(2) Subject Matter: Hours earned prior to certification

(a) Commenter: Ruth Lancaster

Comment: This is a financial hardship for water systems. For example, a coworker passed a Class IV exam in July of this year. He has 11 months to obtain 24 hours of continuing education credit before the June 2010 renewal. Our facility has budgeted to take all certified operators off the job for 12 hours of training every year – a substantial investment of employee time in scheduling attendance, paying overtime to cover shifts during training, and loss of manpower to accomplish daily/weekly tasks and preventive maintenance. Our water system will spend an estimated \$750 + additional yearly for each employee placed in this predicament of needing an ‘extra’ 12 hours before renewal – on top of the training and travel expenses already paid for the certification class (which is now an investment of training dollars giving us no return in the form of continuing education credit). In addition, it is inconsistent to charge the same fee for persons who attend the certification school after earning a license as for those who are taking the school for the first time to obtain a license - then give CEU credit to one attendee and not the other. This is the Division’s own training program, taught by the same instructor, in the same room. All attendees should receive equal treatment.

(b) Response: The cabinet believes that continuing education is intended to increase or refresh an operator’s knowledge after they have passed the certification examination. Therefore, the cabinet decided to only consider continuing education hours earned after initial certification. Individuals who upgrade their certification can use hours earned prior to the upgrade. No change will be made to this administrative regulation regarding this comment.

(3) Subject Matter: Drafting corrections

(a) Commenter: Emily Harkenrider (Legislative Research Commission)

Comment: Ms. Harkenrider suggested several technical drafting corrections.

(b) Response: The cabinet agrees and has made the suggested changes.

V Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body

401 KAR 11:001. Definitions for 401 KAR Chapter 11. Comments were considered and the following changes are suggested:

RELATES TO

Line 6

After "224.01-010(9)", delete "224.10-110".
After "224.73-110", insert ", EO 2009-538".

Page 1

STATUTORY AUTHORITY

Line 7

After "KRS", insert "223.200".
Delete "223.16-220".

Lines 7 and 8

After "224.73-110", insert ", EO 2009-538".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 11

After "KRS 223.200", insert "requires".
Delete "authorizes".

Line 12

After "distribution system operators.", insert the following:
EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.

Page 2

Section 1(5)

Line 5

After "means an individual", insert "who".
Delete "that".

401 KAR 11:010. Boards of certification. Comments were considered and the following changes are suggested:

Page 1

Title

Line 5

After "401 KAR 11:010.", insert "Boards of certification".
Delete the remainder of the title except the period.

Page 1

RELATES TO

Line 6

After "223.160-220", delete "224.10-110".
After "224.73-110", insert ", EO 2009-538".

Page 1

STATUTORY AUTHORITY

Lines 7 and 8

After "224.73-110", insert "EO 2009-538".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 14

After "system operators.", insert the following:

EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.

401 KAR 11:020. Standards of professional conduct for certified operators. Comments were considered and the following changes are suggested:

Page 1

RELATES TO

Line 6

After "223.160-220,", delete "224.10-110,".

After "224.73-110", insert "EO 2009-538".

Page 1

STATUTORY AUTHORITY

Line 7

After "KRS", delete "223.160-220,".

After "224.73-110", insert "EO 2009-538".

Page 1

Line 10

After "operators.", insert the following:

EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.

Page 1

Section 1(1)

Line 15

After "in accordance with", delete "this".

401 KAR 11:030. Wastewater treatment and collection system operators; classification and qualifications. Comments were considered and the following changes are suggested:

Page 1

RELATES TO

Line 7

After "KRS", insert "224.73-110, EO 2009-538".

Delete the remainder of the RELATES TO paragraph in its entirety.

Page 1

STATUTORY AUTHORITY

Line 8

After "224.73-110", insert ", EO 2009-538".

Page 1

NECESSITY, FUNCTION, AND CONFORMITY

Line 10

After "certification of wastewater.", insert the following:

EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.

Page 5

Section 2(1)(f)2.a.

Line 17

After "shall be required", insert "; and".

Delete the period.

Page 6

Section 2(2)(b)1.

Line 7

After "shall be required", insert "; and".

Delete the period.

Page 7

Section 2(2)(e)2.a.

Line 5

After "shall be required", insert "; and".

Delete the period.

Page 7

Section 2(3)(a)3.a.

Line 19

***Reviewer's Note:** After "hours, one (1)", please delete the acronym and insert what "CEU" denotes; is it "Continuing Education Unit"?

Page 8

Section 2(3)(b)3.

Line 8

After "laboratory analysis", insert a comma.

After "the collection, treatment", insert a comma.

401 KAR 11:040. Water treatment and distribution system operators; classification and qualifications. Comments were considered and the following changes are suggested:

Page 1
RELATES TO

Line 7

After "224.10-100," insert "EO 2009-538".

Delete the remainder of the RELATES TO paragraph in its entirety.

Page 1
STATUTORY AUTHORITY

Line 8

After "224.10-110", insert ", EO 2009-538".

Page 1
NECESSITY, FUNCTION, AND CONFORMITY

Line 11

After "water operators.", insert the following:

EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.

Page 4
Section 1(1)(k)

Line 2

After "Treatment certification.", delete "1.".

***Reviewer's Note:** Except for Sections, you can't have a (1) without, at least, a (2); an (a) without a (b); a 1. without a 2.; and so forth.

Page 8
Section 2(1)(k)2.

Line 19

After "treatment plant", insert "shall be required".

Page 9
Sections 2(2)(c)2. and 2(2)(c)2.a.

Lines 12 and 13

After "required.", delete "a.".

Page 9
Sections 2(2)(d)2 and 2(2)(d)2.a.

Lines 19 and 20

After "required.", delete "a.".

Page 10
Section 2(3)(a)

Line 6

After "(a)", delete the period.

Page 10

Section 2(3)(b)

Line 8

After "(b)", delete the period.

Page 10

Sections 2(3)(b) and 2(3) (Should Have Been 2(4))

Lines 9 and 10

After "required.", insert "(4)".

Delete "(3)".

Page 10

Section 2(3) (Should Have Been 2(4))

Lines 10 and 11

After "for the qualifications", insert "established".

Delete "specified".

Page 10

Section 2(3)(a)3.a. (Should Have Been 2(4)(a)3.a.)

Line 19

***Reviewer's Note:** After "hours, one (1)", please delete the acronym, "CEU", and use the complete term.

401 KAR 11:050. Operator certification. Comments were considered and the following changes are suggested:

Page 1

RELATES TO

Line 6

After "223.160-220,", delete "224.10-110,".

After "224.73-110", insert ", EO 2009-538".

Page 1

STATUTORY AUTHORITY

Line 7

After "224.73-10", insert ", EO 2009-538".

Lines 9 and 10

After "and wastewater operators.", insert the following:

EO 2009-538, effective June 12, 2009, establishes the new Energy and Environment Cabinet.

Page 1

Section 1(1)

Line 14

After "meet the qualifications", insert "established".

Delete "specified".

Page 2

Section 1(3)(a)

Lines 2 and 3

After "meets the qualifications", insert "established".

Delete "specified".

Page 2

Section 1(4)(b)

Line 8

After "seventy (70) percent", insert "shall be".

Delete "is".

Page 4

Section 3(3)

Lines 9 and 10

After "Certification Renewal form", delete the following:
, which is incorporated by reference in Section 5 of this
administrative regulation,

Line 11

***Reviewer's Note:** After "a late renewal fee", please insert the amount of the fee or provide a cross-reference citation to the administrative regulation that does establish the amount.

Page 7

Section 5(1)(d)

Line 21

After "Continuing Education Credit", insert "August".

Delete "July".

Page 7

Section 5(1)(e)

Line 23

After "Education Activity Report", insert "August".

Delete "July".

MATERIAL INCORPORATED BY REFERENCE
Application for Approval of Courses for Continuing Education Credit

***General Reviewer's Note:**

1. Please revise the form edition date to August by inserting "August" and deleting "July".

2. Please delete the preference for thirty (30) day submission because a preference is nonenforceable and thus superfluous.
3. File one (1) revised copy of this form with the Compiler in conjunction with filing this suggested amendment.

Continuing Education Activity Report

***General Reviewer's Note:**

1. Insert an edition date of "August 2009".
2. File one (1) revised copy of this form with the Compiler in conjunction with filing this suggested amendment.